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16  
17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION**  
19

20 TRENTON SMITH and MICHAEL  
21 BURROW, Individually and on Behalf  
of All Others Similarly Situated,

22 Plaintiff,  
23  
vs.

24 JOHN SHAHIDI, NELK, INC.,  
METACARD, LLC, NELK USA, INC.,  
25 and KYLE FORGEARD

26 Defendants.  
27

28  
Case No. 8:25-cv-161-FWS-DFM  
**CLASS ACTION**

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS FIRST  
AMENDED CLASS ACTION  
COMPLAINT FOR DAMAGES**

Courtroom: 10D  
Judge: Hon. Fred W. Slaughter  
Date: September 18, 2025  
Time: 10:00 a.m.

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1 **I. INTRODUCTION**

2 Far from pleading fraud, the Amended Complaint (“AC”) squarely alleges that  
3 Defendants told Plaintiffs the truth. This case should be dismissed.

4 Plaintiffs claim they bought Metacard NFTs based on Defendants’ promises  
5 of future perks. Yet the AC repeatedly admits Defendants *delivered* those perks—  
6 everything from access to exclusive events and forums, to steep product discounts  
7 and large cash giveaways. And while Plaintiffs say they had hoped for more by now,  
8 Defendants never set a deadline. To the contrary, they described Metacard as a “long  
9 term play” they intended to run “for years and years and years.” Worse yet, Plaintiffs  
10 allege no facts—not one—showing that Defendants knew any promise would go  
11 unfulfilled. That is a black-letter requirement for misrepresentation claims based on  
12 future non-performance, and it is not met here.

13 Plaintiffs’ contract and conspiracy claims fare no better. They fall far short  
14 of pleading breach of contract. And without an underlying tort, their conspiracy claim  
15 fails as a matter of law.

16 For these reasons—and more below—the AC should be dismissed with  
17 prejudice.

18 **II. BACKGROUND**

19 **A. Defendants**

20 Defendants John Shahidi and Kyle Forgeard built the Full Send brand—  
21 an online media powerhouse with millions of followers. ¶¶ 2-3.<sup>1</sup> Their company,  
22 Defendant Nelk, Inc., owns subsidiaries spanning the entertainment and merchandise  
23 industries. ¶ 13. Defendant Nelk USA, Inc. is one such subsidiary. ¶ 14. Defendant

24  
25  
26 <sup>1</sup> “¶” refers to paragraphs of the AC. Capitalized terms not defined herein have the  
27 same meaning as in the AC. Unless otherwise noted, all emphasis is added, and all  
28 internal citations, quotation marks, and alterations are omitted. Defendants accept  
Plaintiffs’ well-pleaded allegations as true solely for purposes of this motion.

1 Metacard, LLC was formed to sell Full Send Metacard NFTs (“Metacards”). ¶ 4.<sup>2</sup>

2 **B. The Metacard Program**

3 “Defendants launched the Metacards on January 19, 2022, and all 10,000  
4 NFTs were sold within 10 minutes.” ¶ 46. The AC alleges that on January 18, 2022,  
5 Defendants promised that Metacard holders would receive perks such as access to  
6 future projects, merchandise, and rewards. ¶¶ 32-35, 38-39, 75. It also alleges that  
7 Defendants made statements about devoting resources to Metacard and treating it as  
8 a stock or IPO. ¶¶ 36-37.

9 The AC concedes that Defendants delivered on their promises. They provided  
10 exclusive access to events, including performances by high-profile artists such as  
11 Snoop Dogg. ¶¶ 52, 55, 77. They delivered substantial discounts on branded products.  
12 ¶¶ 60, 77. They granted access to private forums. ¶ 63, 65. And they conducted raffles  
13 and promotional giveaways—awarding \$100,000 to one Metacard holder and more  
14 to others. ¶¶ 62, 78.

15 After the launch, Defendants discussed the Metacard program on social media  
16 and in private channels. ¶¶ 51, 53-54, 58-59, 63-65, 76, 88, 90-97. They expressed  
17 enthusiasm about the Metacard program and aspirations for future projects. *Id.*  
18 But the AC does not allege that Defendants sold any additional Metacards after the  
19 January 19, 2022 launch.

20 **C. The Rescission Offer**

21 In April 2024, in the wake of the broader NFT market collapse,<sup>3</sup> Defendants  
22 announced a new opportunity for Metacard holders, which became available on May

---

23 <sup>2</sup> NFTs—or “non-fungible tokens”—are digital assets that can be bought and sold  
24 online. ¶ 6; *see generally Yuga Labs v. Ripps*, 2023 WL 3316748, at \*5 (C.D. Cal.  
25 Apr. 21, 2023) (recognizing that NFTs have “documented commercial value” and are  
26 often “sold specifically for their connection to a particular brand, creator,  
or associated creative work”).

27 <sup>3</sup> Phil Rosen, *Remember when NFTs sold for millions of dollars? 95% of the digital*  
28 *collectibles may now be worthless*, Business Insider (Sept. 20, 2023),  
<https://markets.businessinsider.com/news/currencies/nft-market-crypto-digital-assets-investors-messari-mainnet-currency-tokens-2023-9>.

1 20, 2024. *See ¶¶ 91-94, 100-101; Declaration of Rona S. Li (“Li Decl.”), Exs. 2-4.*  
2 Defendants invited all Metacard holders (including Plaintiffs) to participate in a new  
3 product initiative or, if they preferred, to receive a full refund of their Metacard  
4 purchase price plus interest by entering into a Token Rescission Agreement (the  
5 “Agreement”). *Id.* The offer was widely publicized—across social media, the  
6 Metacard Discord channel, and Defendants’ website—and remained open for  
7 30 days. *Id.*

8 **D. This Lawsuit**

9 On January 29, 2025, Plaintiff Trenton Smith filed this putative class action,  
10 asserting claims for fraud, violations of the California Consumers Legal Remedies  
11 Act (“CLRA”), and breach of fiduciary duty. ECF No. 1. Defendants moved to  
12 dismiss. ECF No. 51. Rather than oppose the motion, on May 21, 2025, Plaintiff filed  
13 the AC. ECF No. 57. The AC asserts claims for fraud, violations of the CLRA, breach  
14 of fiduciary duty, breach of contract, and civil conspiracy. *Id.* The AC alleges that  
15 Defendants lied about the Metacard program the day before the January 19, 2022  
16 sales. ¶¶ 26-40. It also alleges that, after the sales, “Defendants’ continuing  
17 misrepresentations were made, in part, to delay and [sic] discovery by Plaintiff or  
18 other class members.” ¶ 120. The AC further alleges that Smith was not aware of the  
19 rescission offer until the 30-day offer period had passed, and that new Plaintiff  
20 Michael Burrow signed the Agreement and returned his Metacard but did not receive  
21 a refund. ¶¶ 122, 131-132.

22 **E. The Duplicative State Court Lawsuit**

23 One week after filing the AC—and in a transparent attempt to harass  
24 Defendants and hedge their bets against this Court—Plaintiffs’ counsel filed a nearly  
25 identical complaint in California state court. *See Husary v. Shahidi*, No. 30-2025-  
26 01487294-CU-BT-CXC (Cal. Super. Ct. June 2, 2025) (the “State Complaint”); Li  
27 Decl., Ex. 1. The State Complaint copy-and-pastes the same allegations, on behalf of  
28 the same putative class, against the same Defendants, for the same alleged

1 misconduct. The only difference is a claim under California's Unfair Competition  
2 Law—and even *that* is premised on alleged fraud and CLRA violations asserted here.  
3 Defendants will seek appropriate relief in state court and reserve all rights.

4 **III. LEGAL STANDARDS**

5 To survive a motion to dismiss under Rule 12(b)(6), a complaint must allege  
6 "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v.*  
7 *Twombly*, 550 U.S. 544, 570 (2007). It must contain "factual content that allows the  
8 court to draw the reasonable inference that the defendant is liable for the misconduct  
9 alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Courts need not accept  
10 "allegations that are merely conclusory, unwarranted deductions of fact, or  
11 unreasonable inferences." *Khoja v. Orexigen Therapeutics*, 899 F.3d 988, 1008 (9th  
12 Cir. 2018).

13 Because Plaintiffs' claims sound in fraud, they must also meet Rule 9(b)'s  
14 heightened pleading standard, which requires Plaintiff to plead "the circumstances  
15 constituting fraud" with particularity. Fed. R. Civ. P. 9(b); *see, e.g., Sollberger v.*  
16 *Wachovia Sec., LLC*, 2010 WL 2674456, at \*7 (C.D. Cal. June 30, 2010) (applying  
17 Rule 9(b) to fiduciary duty claim sounding in fraud); *Kearns v. Ford Motor Co.*, 567  
18 F.3d 1120, 1125 (9th Cir. 2009) (applying Rule 9(b) to CLRA claims sounding in  
19 fraud). That means specifying "the who, what, when, where, and how" of the alleged  
20 fraud. *Kearns*, 567 F.3d at 1124; *see Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th  
21 Cir. 2007) (requiring "an account of the time, place, and specific content of the false  
22 representations as well as the identities of the parties to the misrepresentations");  
23 *Golden W. Wings LLC v. ShiftPixy*, 2023 WL 6787815, at \*3 (C.D. Cal. Sept. 11,  
24 2023) (Slaughter, J.) ("Rule 9(b) does not allow a complaint to lump multiple  
25 defendants together but requires plaintiffs to differentiate their allegations when  
26 suing more than one defendant."). It also requires "set[ting] forth what is false or  
27 misleading about a statement, and why." *Beyer v. Symantec Corp.*, 333 F. Supp. 3d  
28 966, 975 (N.D. Cal. 2018).

1       **Elements of Fraud.** Fraud claims require: “(a) misrepresentation (false  
2 representation, concealment, or nondisclosure); (b) knowledge of falsity (or  
3 ‘scienter’); (c) intent to defraud, *i.e.*, to induce reliance; (d) justifiable reliance; and  
4 (e) resulting damage.” *Coast Surgery Ctr. v. United Healthcare Ins.*, 2024 WL  
5 650174, at \*8 (C.D. Cal. Jan. 5, 2024) (Slaughter, J.). “The alleged misrepresentation  
6 must ordinarily be an affirmation of past or existing facts to be an actionable fraud  
7 claim; predictions as to future events are deemed opinions, and not actionable by  
8 fraud.” *Glen Holly Ent. v. Tektronix*, 100 F. Supp. 2d 1086, 1093 (C.D. Cal. 1999).  
9 Where, as here, the theory is promissory fraud, the complaint must allege “why the  
10 promise was false when made,” which “requires pleading facts from which it can be  
11 inferred that the promisor had no intention of performing at the time the promise was  
12 made.” *UMG Recordings v. Glob. Eagle Ent.*, 117 F. Supp. 3d 1092, 1108 (C.D. Cal.  
13 2015) (“Mere nonperformance of a promise does not suffice to show the falsity of  
14 the promise.”). *Id.* Reliance requires allegations that the plaintiff “actually relied on  
15 the defendant’s misrepresentations,” and that he was “reasonable in doing so.” *OCM*  
16 *Principal Opportunities Fund, L.P. v. CIBC World Mkts. Corp.*, 68 Cal. Rptr. 3d 828,  
17 855 (Cal. Ct. App. 2007).

18       An action for fraud must be based on a statement of past or existing facts, not  
19 a statement regarding future events. *See S.F. Design Ctr. Assocs. v. Portman Cos.*,  
20 50 Cal. Rptr. 2d 716, 724 (Cal Ct. App. 1995) (“It is hornbook law that an actionable  
21 misrepresentation must be made about past or existing facts; statements regarding  
22 future events are merely deemed opinions.”); *Indigo Grp. USA v. Polo Ralph Lauren*  
23 *Corp.*, 2011 WL 13128301, at \*3 (C.D. Cal. Oct. 25, 2011) (predictions as to future  
24 events are opinions, not actionable fraud). Additionally, while a quantifiable  
25 statement about the “specific or absolute characteristics of a product,” may be an  
26 actionable statement of fact, a “general, subjective claim about a product is non-  
27 actionable puffery.” *Newcal Indus. v. Ikon Off. Sol.*, 513 F.3d 1038, 1053 (9th Cir.  
28 2008); *see also Glen Holly Ent. v. Tektronix*, 352 F.3d 367, 379 (9th Cir. 2003)

1 (generalized, vague and unspecific assertions constitute puffery upon which a  
2 reasonable consumer could not rely). Exceptions to the general rule that a  
3 misrepresentation is actionable unless it is based on an existing fact arise (1) where  
4 a party holds himself or herself out to be specially qualified and the other party is so  
5 situated that he or she may reasonably rely upon the former's superior knowledge,  
6 (2) where the opinion is by a fiduciary or other trusted person, (3) where a party states  
7 his or her opinion as an existing fact or as implying facts which justify a belief in the  
8 truth of the opinion. *Brakke v. Econ. Concepts, Inc.*, 153 Cal. Rptr. 3d 1, 6 (Cal. Ct.  
9 App. 2013).

10       **Elements of Breach of Fiduciary Duty.** Fiduciary duty claims require (1) the  
11 existence of a fiduciary duty, (2) a breach of that duty, and (3) damage proximately  
12 caused by the breach. *See Guo v. Robl*, 2023 WL 2683473, at \*5 (C.D. Cal. Mar. 2,  
13 2023) (Slaughter, J.). “A fiduciary relationship is created where a person reposes trust  
14 and confidence in another and the person in whom such confidence is reposed obtains  
15 control over the other person’s affairs.” *Id.* “Before a person can be charged with a  
16 fiduciary obligation, he must either knowingly undertake to act on behalf and for the  
17 benefit of another, or must enter into a relationship which imposes that undertaking  
18 as a matter of law.” *Id.* “The breach of fiduciary duty can be based upon either  
19 negligence or fraud depending on the circumstances.” *Ash v. N. Am. Title Co.*, 168  
20 Cal. Rptr. 3d 499, 513 (Cal. Ct. App. 2014).

21       **Elements of California Consumers Legal Remedies Act.** CLRA claims  
22 require (1) a misrepresentation, (2) the defendant’s knowledge of it, (3) the plaintiff’s  
23 reliance, and (4) resulting damages. *See Bergeron v. Monex Deposit Co.*, 2020 WL  
24 3655495, at \*3 (C.D. Cal. Apr. 29, 2020); *Coleman-Anacleto v. Samsung Elecs. Am.*,  
25 2017 WL 86033, at \*7 (N.D. Cal. Jan. 10, 2017) (“A plaintiff must sufficiently allege  
26 a defendant’s knowledge at the time of sale in order to state a CLRA claim under an  
27 affirmative misrepresentation theory just as a plaintiff must do so in order to state a  
28 CLRA claim under a fraudulent omission theory.”).

1                   **Elements of Breach of Contract.** Breach of contract claims require “(1) the  
2 existence of the contract, (2) plaintiff’s performance or excuse for nonperformance,  
3 (3) defendant’s breach, and (4) the resulting damages to the plaintiff.” *Soper v. United  
4 Airlines*, 2024 WL 3305770, at \*4 (C.D. Cal. Apr. 19, 2024) (Slaughter, J.).  
5 “A written contract may be pleaded either by its terms—set out verbatim in the  
6 complaint or a copy of the contract attached to the complaint and incorporated therein  
7 by reference—or by its legal effect.” *Id.* “[T]o plead a contract by its legal effect,  
8 plaintiff must allege the substance of its relevant terms, which requires a careful  
9 analysis of the instrument, comprehensiveness in statement, and avoidance of legal  
10 conclusions.” *Id.* “Likewise, to plead breach, the plaintiff must identify with  
11 specificity the contractual obligations that were allegedly breached.” *Grapevine  
12 Educ., LLC v. Educ. Ventures, LLC*, 2023 WL 5167242, at \*5 (S.D. Cal. Feb. 17,  
13 2023).

14                   **Elements of Civil Conspiracy.** Civil conspiracy claims require “(1) the  
15 formation and operation of the conspiracy, (2) wrongful conduct in furtherance of the  
16 conspiracy, and (3) damages arising from the wrongful conduct.” *ARF Dashnaktsutyun, W. U.S.A. v. Armenian Revolutionary Fed’n WUSA*, 2023 WL  
17 4155366, at \*11 (C.D. Cal. May 26, 2023) (Slaughter, J.) (quoting *Kidron v. Movie  
18 Acquisition Corp.*, 40 Cal. App. 4th 1571, 1581 (1995)). Under California law, “there  
19 is no separate and distinct tort cause of action for civil conspiracy.” *Liberty City  
20 Movie, LLC v. U.S. Bank, N.A.*, 824 F. App’x 505, 508 (9th Cir. 2020). “In other  
21 words, a civil conspiracy does not give rise to a cause of action unless an independent  
22 civil wrong has been committed.” *Id.* Additionally, the conspiring defendants must  
23 have “actual knowledge that a tort is planned and concur in the scheme with  
24 knowledge of its unlawful purpose.” *Kidron*, 40 Cal. App. 4th at 1582. A civil  
25 conspiracy claim must be pleaded with particularity under Rule 9(b)’s heightened  
26 pleading standard where the claim sounds in fraud. *Wasco Prods. v. Southwall  
27 Techs.*, 435 F.3d 989, 990-91 (9th Cir. 2006).

1 **IV. ARGUMENT**

2 Plaintiffs' misrepresentation claims—fraud, CLRA, breach of fiduciary duty,  
3 and conspiracy—rise and fall on what was said before they bought their Metacards.  
4 But the AC identifies no pre-sale statement that was false when made, and pleads no  
5 facts showing fraudulent intent or reliance. That is dispositive. Everything else—  
6 post-sale commentary, vague marketing, and buyer's remorse—is legally irrelevant.

7 The contract claim fails for a different reason: Plaintiffs do not allege the  
8 contract terms they contend were breached. And the conspiracy claim fails without  
9 an underlying tort.

10 **A. The AC Fails To State A Claim As To Any Pre-Sale Statement**

11 Plaintiffs' claims require a false statement—one that was untrue when made.  
12 *Supra* Part III (collecting cases). The AC alleges none. The AC alleges (i) pre-sale  
13 statements made before Plaintiffs bought their Metacards on January 19, 2022, *e.g.*,  
14 ¶¶ 26-40, and (ii) post-sale statements made after their purchases, *e.g.*, ¶¶ 51, 53-54,  
15 58-59, 63-65, 76, 88, 90-97. But Plaintiffs do not base a claim on the post-sale  
16 statements, as none could have induced Plaintiffs' purchases—and all are  
17 actionable in any event. *Infra* Part IV.B. As for the pre-sale statements, the AC  
18 does not identify any that were false when made, allege facts showing scienter or  
19 negligence, or plead reasonable reliance on any supposed pre-sale misstatement.  
20 Each defect is independently fatal.

21 1. The AC Fails To Allege That Any Pre-Sale Statement Was False  
22 Or Misleading

23 Plaintiffs challenge pre-sale statements about future benefits—such as  
24 exclusive access to projects and events, membership perks, branded merchandise,  
25 and giveaways. ¶¶ 32-35, 38-39, 75. But the AC concedes that those benefits were  
26 delivered. It admits Metacard holders received access to exclusive events, ¶ 52  
27 (concert), ¶ 55 (private watch parties), ¶ 77 (events); a virtual forum, ¶¶ 63, 65;  
28 merchandise discounts, ¶¶ 60, 77; and giveaways, ¶¶ 62, 78 (giveaways of

1 “expensive products” or “cash prizes”). It also acknowledges that Defendants  
2 launched a business venture for Metacard holders. ¶¶ 91-97. Plaintiffs may wish more  
3 had been delivered. But they cannot identify any meaningful daylight between what  
4 was promised and what was delivered, dooming their claims. *See Coast Surgery*,  
5 2024 WL 650174, at \*9 (dismissing where complaint failed to specify “the difference  
6 between what Plaintiff believes the UCR rate should have been for each procedure  
7 and what Defendants actually paid”).

8 Plaintiffs try to overcome those admissions by alleging that they expected  
9 more than “a few limited events” and believed Defendants would continue offering  
10 benefits. ¶ 56. But the AC itself contradicts that narrative: It acknowledges that  
11 Defendants delivered multiple events and perks over the first two years. And in any  
12 case, the AC does not allege that Defendants promised to deliver specific benefits  
13 within a specific time period. The AC lists perks Defendants delivered within the first  
14 two years. ¶¶ 52, 55, 60, 62-63, 65, 77-78. But Defendants never set a deadline for  
15 when all anticipated benefits would arrive. To the contrary, the AC admits that  
16 Defendants described the Metacard project as “a long term play,” intended to run “for  
17 years and years and years,” and the start of “a long journey.” ¶¶ 30b, 36a, 38.  
18 Plaintiffs are not so much pleading fraud as impatience.

19 To make matters worse, the AC alleges no facts suggesting that—at the time  
20 of the pre-sale statements—Defendants did not intend to provide all promised  
21 benefits. That is fatal to these claims. *See Miron v. Herbalife Int'l*, 11 F. App'x 927,  
22 930 (9th Cir. 2001) (“[T]o state a viable claim for misrepresentation, a plaintiff must  
23 show that the defendant did not intend to perform the promises at the time they were  
24 made”); *UMG Recordings*, 117 F. Supp. 3d at 1108 (“Mere nonperformance of a  
25 promise does not suffice to show the falsity of the promise.”); *see also Brakke*, 153  
26 Cal. Rptr. 3d at 6 (“[T]o be actionable, a misrepresentation must be of an existing

27  
28

1 fact, not an opinion or prediction of future events.”).<sup>4</sup>

2 Plaintiffs also challenge pre-sale statements that Defendants were dedicating  
3 resources to the Metacard project. ¶ 36.<sup>5</sup> But the AC never explains how those  
4 statements were false. It alleges—in conclusory fashion and “[u]pon information and  
5 belief—that “Defendants failed to devote any effort toward fulfilling the promises of  
6 Metacard ownership.” ¶ 70. Yet Plaintiffs offer no basis for that belief, and the  
7 allegation is contradicted by the AC’s own admissions. *See* ¶¶ 52, 55, 60, 62-63, 65,  
8 77-78, 91-97. As a matter of law, conclusory allegations made on information and  
9 belief can neither survive Rule 9(b) nor override specific facts pleaded elsewhere.  
10 *BMA LLC v. HDR Glob. Trading Ltd.*, 2021 WL 949371, at \*6, \*9 (N.D. Cal. Mar.  
11 12, 2021) (dismissing claims made on information and belief because “[a]bsent  
12 additional facts rendering plaintiff’s beliefs plausible, the allegations fail under Rule  
13 8, let alone under Rule 9(b)’’); *Becton, Dickinson & Co. v. Cytek Biosciences*, 2020  
14 WL 1877707, at \*4 n.10 (N.D. Cal. Apr. 15, 2020) (same).

15 Many challenged pre-sale statements about future benefits and allocated  
16 resources are also actionable puffery or opinions. The AC points to vague, forward-  
17 looking remarks such as (i) “I think what [the Metacard] gives you access to,”  
18 (ii) “We’ll be doing a lot of collabs in the space with cool projects,” (iii) “This is  
19 something special we’re building, I believe. And I feel like buyers right now are  
20 getting in early,” (iv) “you guys are helping us build something and you’re also  
21 hopefully getting a more valuable token,” and (v) “The Full Send *goal* is to launch

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22  
23 <sup>4</sup> At most, Plaintiffs allege that Defendants began to “abandon the promise of ongoing  
24 perks such as attendance at events and access to merchandise,” in March 2022. ¶ 57.  
25 But this allegedly occurred two months *after* Plaintiffs purchased their Metacards.  
26 Not only are those post-sale statements irrelevant to Plaintiffs’ fraud claims, *see*  
27 Section IV.B *infra*, but they are also contradicted by Plaintiffs’ allegations about  
28 events and other benefits delivered after March 2022. *E.g.* ¶ 52 (Snoop Dogg concert  
in April 2022).

29 <sup>5</sup> Plaintiffs additionally challenge pre-sale statements representing that Metacard was  
30 about utilities and not art and “suggest[ing] that the Metacard would function like  
31 stock or an initial public offering.” ¶¶ 30, 37. But the AC does not offer a single  
32 reason why those statements were false.

1 more Full Send branded ventures.” ¶¶ 32-34, 38. These are textbook examples of  
2 actionable puffery and opinion—not concrete misrepresentations. *See In re Am.*  
3 *Apparel S’holder Litig.*, 855 F. Supp. 2d 1043, 1072 (C.D. Cal. 2012) (words such as  
4 “pursuing,” “looking to build,” “going to be,” and “committed to” are goals, not  
5 facts); *Indigo Grp.*, 2011 WL 13128301, at \*3 (dismissing fraud claim with prejudice  
6 “because statements of future intent are not actionable fraud”); *Glen Holly Ent.*, 352  
7 F.3d at 379 (affirming dismissal where “statements were generalized, vague and  
8 unspecific assertions, constituting mere ‘puffery’ upon which a reasonable consumer  
9 could not rely”); *In re Syntex Corp. Sec. Litig.*, 855 F. Supp. 1086, 1095 (N.D. Cal.  
10 1994) (statements that “we’re doing well and I think we have a great future” were  
11 actionable puffery).

12           2.       The AC Fails To Allege That Any Defendant Acted With Scienter  
13           Or Negligence

14       Plaintiffs’ claims require fraudulent intent, knowledge, and/or negligence.  
15 *Supra* Part III (collecting cases). The AC alleges none of it.

16       Plaintiffs assert that “[p]roof of Defendants’ scienter comes” from podcasts,  
17 which allegedly show “that Metacard was a fraudulent scheme since its inception,”  
18 and that Metacards were “patently worthless.” ¶ 86. But they identify no statement  
19 in any podcast contradicting a pre-sale representation, let alone one showing  
20 contemporaneous knowledge of falsity. And the AC’s assertion that “Defendants  
21 knew at all times that they did not have any plans or otherwise intend to pursue the  
22 promised benefits of the Metacard in good faith,” ¶ 42, is pure *ipse dixit*.

23       The AC’s allegations simply do not suffice. “Although intent can be averred  
24 generally under Rule 9(b), a plaintiff must point to facts which show that defendant  
25 harbored an intention not to be bound by terms of the contract at formation.” *UMG*  
26 *Recordings*, 117 F. Supp. 3d at 1109-10; *see IDS v. AMResorts, LP*, 2024 WL  
27 4228238, at \*16 (C.D. Cal. July 9, 2024) (Rule 9(b) requires “facts from which an  
28 inference of scienter could be drawn.”). The AC points to none. *See id.* at \*17 (“[The

1 FAC] does not allege that Fernandez and Torres made inconsistent contemporaneous  
2 statements, or that they later conceded that when they made those statements they  
3 knew that the statements were false. Instead, the FAC only alleges that these  
4 individuals ‘had no intention of honoring’ their promises at the time of making them.  
5 This conclusory allegation does not meet Plaintiffs’ burden under Rule 9(b) of setting  
6 forth facts from which an inference of scienter could be drawn.”).

7 Lest we forget, the AC openly admits that Defendants provided numerous  
8 benefits to Metacard holders. Section IV.A.1, *supra*. That forecloses any claim of  
9 fraudulent intent or negligence. *See Tsai v. Wang*, 2017 WL 2587929, at \*6 (N.D.  
10 Cal. June 14, 2017) (“[T]he allegations in the complaint fail to give rise to a plausible  
11 inference that Defendant did not intend to honor his promises to deliver wines to  
12 Plaintiff at the time he made them.”).

13                   3.     The AC Fails To Allege That Plaintiff Relied On Any Pre-Sale  
14                   Statement

15 Plaintiffs’ claims also require reliance—that Plaintiffs actually and justifiably  
16 relied upon a specific misrepresentation in deciding to buy. *Supra* Part III (collecting  
17 cases). But the AC offers nothing but conclusory allegations of reliance.

18 It vaguely alleges that Plaintiffs “listened to Defendants’ podcast episode and  
19 watched Defendants’ livestream,” and that they relied on generic “statements  
20 regarding the benefits of owning a Metacard.” ¶¶ 117-118, 125-126. But the AC  
21 never identifies which specific statements Plaintiffs relied on or when they heard or  
22 saw them. That alone defeats their claim. *See Kearns*, 567 F.3d at 1126-27 (affirming  
23 dismissal where plaintiff “failed to specify which sales material he relied upon in  
24 making his decision to buy a CPO vehicle”); *Hernandez v. Nissan N. Am.*, 2023 WL  
25 3806377, at \*4 (C.D. Cal. Mar. 29, 2023) (dismissing where complaint “fails to  
26 identify when Plaintiffs viewed the marketing materials”); *Lolicel (Pty) Ltd. v.*  
27 *Stanmar Int’l [USA]*, 2023 WL 3134599, at \*8 (S.D. Cal. Apr. 27, 2023) (dismissing  
28 where “Plaintiff has not particularly identified which misrepresentations upon which

1 it was justified in relying on”).

2 **B. The AC Does Not Base A Claim On Any Post-Sale Statement**

3 Plaintiffs’ misrepresentation claims necessarily rest on statements made before  
4 they bought their Metacards on January 19, 2022, thereby inducing their purchases.  
5 *E.g.*, ¶¶ 30, 116. To be sure, there is plenty of rhetoric about post-sale statements in  
6 the AC. *E.g.*, ¶¶ 51, 53-54, 58-59, 63-65, 76, 88, 90-97. But post-sale statements  
7 could not have induced Plaintiffs’ earlier purchases, and they never contend  
8 otherwise.

9 On its face, the AC’s misrepresentation claims are based on Plaintiffs’  
10 Metacard purchases on January 19, 2022. *E.g.*, ¶ 151 (“As a result of Defendants’  
11 wrongful acts in concealing and misrepresenting these facts, Plaintiffs purchased  
12 Metacards . . . .”); ¶ 156 (“As a result, Plaintiff and Class Members relied on those  
13 false representations (they are identified above) and purchased the Metacards . . . .”);  
14 ¶ 177 (“Had Plaintiffs and the Class Members known of the properties of the  
15 Metacards, they would not have proceeded with purchasing . . . .”). Nowhere does it  
16 allege that any post-sale statement played a role in Plaintiffs’ earlier purchase  
17 decisions. It appears these post-sale allegations were included in an effort to plead  
18 around the applicable statutes of limitations. ¶ 120 (“Defendants’ continuing  
19 misrepresentations were made, in part, to delay and [*sic*] discovery by Plaintiff or  
20 other class members.”).

21 Because Plaintiffs’ misrepresentation claims rise and fall on the pre-sale  
22 statements, the Court need not analyze the post-sale statements. But for the record,  
23 no post-sale statement is actionable. All were vague expressions of optimism,  
24 predictions, or opinions—not concrete misrepresentations of fact. Many were classic  
25 puffery. *See Glen Holly Ent.*, 352 F.3d at 379 (affirming dismissal where “statements  
26 were generalized, vague and unspecific assertions, constituting mere ‘puffery’ upon  
27 which a reasonable consumer could not rely”). Others concerned future plans, which  
28 are not actionable unless Defendants knew at the time they would never follow

1 through. *See In re Am. Apparel S'holder Litig.*, 855 F. Supp. 2d at 1072 (words such  
2 as “pursuing,” “looking to build,” “going to be,” and “committed to” are goals, not  
3 facts); *Indigo Grp.*, 2011 WL 13128301, at \*3 (dismissing fraud claim with prejudice  
4 “because statements of future intent are not actionable fraud”). Some are not even  
5 attributed to Defendants but to others like “Judd.” ¶ 63. None was false or misleading.  
6 And in any event, Plaintiffs do not allege that they ever saw a post-sale statement  
7 about the Metocard program.

8 **C. The AC Fails To Allege A Fiduciary Relationship**

9 Plaintiffs’ fiduciary duty claim fails for an independent reason: Defendants  
10 owed no fiduciary duty. Fiduciary duties arise only where one party “knowingly  
11 undertake[s] to act on behalf and for the benefit of another” or “enter[s] into a  
12 relationship which imposes that undertaking as a matter of law.” *City of Hope Nat'l  
13 Med. Ctr. v. Genentech*, 181 P.3d 142, 150 (Cal. 2008). None of that is alleged here.

14 “California law is clear that an arm’s length commercial transaction does not  
15 give rise to a fiduciary relationship.” *Kamath v. Itria Ventures, LLC*, 2024 WL  
16 590603, at \*6 (N.D. Cal. Feb. 13, 2024); *see McCann v. Lucky Money*, 29 Cal. Rptr.  
17 3d 437, 449 (Cal. Ct. App. 2005) (“Generally, there is no fiduciary owed duty in a  
18 purely commercial situation.”); *see id.* (no fiduciary duty where “the nature of the  
19 relationship between the customer and the telegram company was in the nature of an  
20 arms-length transaction in which plaintiff bargained for defendant’s promise to  
21 transmit a certain sum of money”). Plaintiffs bought Defendants’ product at arms’  
22 length. That is ordinary commerce, not a fiduciary relationship.

23 Plaintiffs try to evade this black-letter rule by labeling Defendants their  
24 “agent.” ¶ 149. But an agency relationship requires “mutual consent, and control by  
25 the principal of the agent.” *Luken v. Christensen Grp.*, 247 F. Supp. 3d 1158, 1163  
26 (W.D. Wash. 2017). The AC alleges neither. *See id.* at 1163-64 (dismissing where  
27 plaintiff “[had] not suggested, much less pled, that the parties agreed that [defendant]  
28 or its officers agreed to be [plaintiff’s] agent, or that [plaintiff] agreed to be their

1 principal,” and did not “plausibly allege that [plaintiff] had the requisite control over  
2 the defendants to make them his agent”). Accepting Plaintiffs’ theory would turn  
3 every commercial transaction into a fiduciary relationship, which is not the law.<sup>6</sup>

4 **D. The AC’s CLRA Claim Fails Because Plaintiffs Are Not Entitled To  
5 Equitable Relief**

6 Plaintiffs’ CLRA claim fails for the independent reason that they are not  
7 entitled to the equitable relief they seek. *See* ¶ 180 (seeking an injunction, restitution,  
8 and disgorgement under the CLRA).<sup>7</sup>

9 To obtain equitable relief, Plaintiffs must show that legal remedies are  
10 inadequate. *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 843-44 (9th Cir. 2020).  
11 But they do not even attempt to do so. “Monetary damages are generally an adequate  
12 remedy for past harm, especially where the legal and equitable claims asserted are  
13 duplicative.” *In re Ford Motor Co. DPS6 Powershift Transmission Prods. Liab. Litig.*,  
14 689 F. Supp. 3d 760, 777 (C.D. Cal. 2023). Here, Plaintiffs seek the same  
15 monetary damages—on the same basis and in the same amount—as in their request  
16 for equitable relief. ¶¶ 178-80; *see Sonner*, 971 F.3d at 844 (“Sonner fails to explain  
17 how the same amount of money for the exact same harm is inadequate or incomplete  
18 . . . .”). That precludes their request for equitable relief.

19 Plaintiffs’ request for injunctive relief is doubly misguided because they lack  
20 standing to make it. “To establish Article III standing to obtain an injunction,  
21 Plaintiffs must prove that they face a threat of future injury that is actual and  
22 imminent.” *Ford Motor*, 689 F. Supp. 3d at 777. That is not present here, as Plaintiffs

23 <sup>6</sup> The AC also alleges that Defendants had specialized knowledge with respect to  
24 Metacard, ¶ 45, but to the extent Plaintiffs suggest that such knowledge gives rise to  
25 a fiduciary duty, they are mistaken. Specialized knowledge does not create a fiduciary  
26 duty where one did not otherwise exist. *See Signal Hill Serv. v. Macquarie Bank Ltd.*,  
27 2013 WL 12244056, at \*19 (C.D. Cal. June 12, 2013) (finding no fiduciary duty even  
where one party had superior knowledge because a mere difference in power and  
access to information does not establish a fiduciary relationship).

28 <sup>7</sup> While the AC also cites CLRA Section 1770(a)(19) concerning “unconscionable  
provisions,” ¶ 178(g), it never identifies the provision at issue or explains why it is  
unconscionable.

1 do not allege plans “to purchase [another Metocard] in the future.” *In re Coca-Cola*  
2 *Prods. Mktg. & Sales Pracs. Litig. (No. II)*, 2021 WL 3878654, at \*2 (9th Cir. Aug.  
3 31, 2021). “Without any stated desire to purchase [one] in the future, [plaintiffs] do  
4 not have standing to pursue injunctive relief.” *Id.*

5 **E. The AC Fails To Allege Breach Of Contract**

6 The contract claim fails at the threshold. Plaintiffs do not allege the existence  
7 of an enforceable contract, much less identify the terms Defendants supposedly  
8 breached. Plaintiffs assert that Burrow entered into an agreement on June 17, 2024,  
9 under which he “would receive \$2,300, in exchange for returning his Metocard  
10 tokens.” ¶¶ 130-31, 185. But the AC says nothing about when or how the contract  
11 was formed, when Forgeard signed it, whether Burrow communicated his  
12 acceptance, or returned Burrow returned his Metocard.<sup>8</sup>

13 Nor do Plaintiffs attach the agreement or plead its terms. They do not allege  
14 the contract’s language or plead it by legal effect—which requires a  
15 “comprehensive[]” account of its material terms. *Soper*, 2024 WL 3305770, at \*4.  
16 They do not say how or when the refund was to be paid, in what form, or under what  
17 conditions. They do not identify any provision that was allegedly breached. And  
18 while the AC declares that Burrow satisfied his obligations, it never specifies what  
19 those obligations were, beyond noting that they included returning his Metocard—  
20 but without explaining how, when, or to whom Burrow was required to return it.  
21 ¶ 132. That is simply not enough to plead breach of contract. *See Grapevine Educ.,*  
22 *LLC*, 2023 WL 5167242, at \*5 (dismissing breach of contract claim because the  
23 complaint “fail[ed] to allege with any degree of specificity...the services [the party  
24 seeking relief] was obligated to perform, or the timing, amount, and form of payment

25  
26 <sup>8</sup> On July 2, 2025, Defendants’ counsel informed Plaintiffs’ counsel that Burrow  
27 never returned his Metocard to qualify for a refund, and therefore that the AC’s  
28 breach-of-contract allegations are demonstrably false. Li Decl. ¶ 2. Although  
Plaintiffs’ counsel promised to investigate the matter with Burrow and revert,  
Defendants’ counsel have heard nothing since. *Id.* Defendants reserve all rights.

1 required of [the allegedly breaching party]”); *Kaui Scuba Ctr. v. Padi Ams.*, 2011  
2 WL 13227827, at \*2 (C.D. Cal. Mar. 10, 2011) (dismissing breach of contract claim  
3 because “[o]n the face of the [complaint], Plaintiff does not: (1) provide a copy of  
4 the contract establishing the contractual terms; (2) lay out the specific terms within  
5 the complaint itself; or (3) allege the substance of the contract’s relevant terms.”).

6 At most, Plaintiffs offer a vague summary of what they think the agreement  
7 required. But “summaries of the provisions that Plaintiff alleges Defendant has  
8 breached, without providing sufficient detail as to their other terms and boundaries,”  
9 do not suffice. *Zo Skin Health v. ForeverYoung Laser Ctr., Weight Mgmt. & Med.*  
10 *Spa, LLC*, 2022 WL 18397631, at \*7 (C.D. Cal. Dec. 7, 2022) (Slaughter, J.).

11 **F. The AC’s Civil Conspiracy Claim Fails Because Plaintiffs Do Not  
12 Alleg a n Underlying Tort or Basic Details About the Conspiracy**

13 Plaintiffs’ civil conspiracy claim fails for two independent reasons.

14 *First*, there is no conspiracy without an underlying tort. *See Lobstein v. Wash.*  
15 *Mut. Mortg. Pass-Through Certificates WMALT Series 2007-OC1*, 2020 WL  
16 5913897, at \*5 (C.D. Cal. Aug. 27, 2020) (“Under California law, there is no separate  
17 tort of civil conspiracy and no action for conspiracy to commit a tort unless the  
18 underlying tort is committed and damage results therefrom.”), *aff’d*, 2021 WL  
19 5405488 (9th Cir. Nov. 18, 2021). Because the AC fails to plead any underlying tort,  
20 the conspiracy claim fails as a matter of law. *See Liberty City Movie*, 824 F. App’x  
21 at 508 (affirming dismissal where no underlying tort supported conspiracy claim).

22 *Second*, the AC does not allege the basic elements of a conspiracy. It vaguely  
23 asserts that Defendants “agreed and conspired to solicit Plaintiffs,” ¶ 193, and “acted  
24 jointly, in concert, or in a conspiracy,” ¶ 195. But it offers no facts about when or  
25 where the conspiracy was formed, who proposed or joined it, or how it was carried  
26 out. That comes nowhere close to alleging a conspiracy. *See ARF Dashnaksutyun*,  
27 2023 WL 4155366, at \*11-12 (Slaughter, J.) (finding that plaintiffs had not  
28 adequately pled civil conspiracy under any pleading standard when the plaintiff did

1 not demonstrate where or when the purported conspiracy took place, which  
2 representatives conceived of, entered into, or carried out the conspiracy, or what  
3 conduct related to the conspiracy); *Murphy v. Am. Gen. Life Ins. Co.*, 74 F. Supp. 3d  
4 1267, 1288 (C.D. Cal. 2015) (dismissing civil conspiracy claims where plaintiff  
5 included only conclusory allegations which lacked detail about when or where a  
6 conspiracy was conceived, or who entered into or carried out the conspiracy).

7 **G. Plaintiffs' Claims Are Barred By Defendants' Rescission Offer**

8 Even if Plaintiffs had stated a misrepresentation claim based on their Metacard  
9 purchases—and they have not—they had the chance to be made whole. Last year,  
10 Defendants offered every Metacard purchaser a full refund of their purchase price  
11 plus interest. That forecloses Plaintiffs' fraud, CLRA, breach of fiduciary duty,  
12 and civil conspiracy claims.

13 Courts hold that a party who has been offered a full refund has no justiciable  
14 misrepresentation claim. *See, e.g., Harris v. PFI W. Stores*, 2020 WL 3965022, at \*3  
15 (C.D. Cal. Apr. 9, 2020) (no standing where plaintiff “would have been fully  
16 compensated by the refund offer she received from [defendant] . . . prior to the  
17 commencement of this case”); *Vavak v. Abbott Lab'ys*, 2011 WL 10550065, at \*3  
18 (C.D. Cal. June 17, 2011) (claims moot where plaintiff rejected refund offer); *Tosh-  
19 Surryhne v. Abbott Lab'ys*, 2011 WL 4500880, at \*3 (E.D. Cal. Sept. 27, 2011)  
20 (“When a defendant offers to make plaintiffs whole, that tender ends any dispute over  
21 restitution.”); *see also Ford Motor*, 689 F. Supp. 3d at 776-77 (plaintiff could not  
22 seek damages under the CLRA where he declined defendant’s refund offer).

23 That is exactly what happened here. Defendants publicized a refund offer  
24 across social media, the Metacard Discord channel, and their website—and kept it  
25 open for 30 days. *See* Li Decl., Exs. 2-4; ¶¶ 91-94. Plaintiffs were eligible for a full  
26 refund plus interest and cannot now seek relief for their Metacard purchase. *See*  
27 *Harris*, 2020 WL 3965022, at \*3. And for the reasons explained above, *see* Part IV.E,  
28 they cannot rely on Burrow’s claim that Defendants breached that contract because

1 he does not adequately allege that claim.

2 **V. CONCLUSION**

3 For the foregoing reasons, the AC should be dismissed with prejudice.

4

5 Dated: July 10, 2025

6 Respectfully submitted,

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**L.R. 11-6.2 CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Defendants, certifies that this brief contains 6,217 words, which complies with the word limit of L.R. 11-6.1.

Dated: July 10, 2025

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